

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

Morgan Howarth, §
§
Plaintiff, § CASE NO. 1:21-CV-643-RP
v. §
§
James Greenhaw & Simnet, LLC, §
§
Defendants. §

DEFENDANT'S ANSWER

Defendants James Greenhaw & Simnet, LLC (collectively “Defendants”) file this Answer to Plaintiff’s complaint and respectfully plead as follows:

PARTIES

1. No response is required.
2. Defendant James Greenhaw admits that he is an individual residing in Round Rock, Texas.
3. Defendant Simnet, LLC (“Simnet”) admits that it is a Texas limited liability company with its principal place of business in Round Rock, Texas.

NATURE OF THE CLAIMS

4. Defendants admit that this purports to be an action for copyright infringement under 17 U.S.C. § 101 et seq. Anything not specifically admitted is denied.

JURISDICTION AND VENUE

5. Admitted.
6. Admitted.

CONDITIONS PRECEDENT

7. Defendants have insufficient information regarding this allegation, and on that basis deny it.

BACKGROUND FACTS

8. No response is required.

9. Defendant Simnet admits that it is a rural high speed Internet service company.

Anything not specifically admitted is denied.

10. Defendants have insufficient information regarding this allegation, and on that basis deny it.

11. Defendant Simnet admits that it acquired a license to the subject photograph on Plaintiff's website on Jan 14, 2020, and used the licensed material according to its understanding of the license at the time. Use of the licensed materials ceased on or before May 5, 2021. Defendants have insufficient information regarding the remainder of this allegation, and on that basis deny it. Anything not specifically admitted is denied.

12. Defendant Simnet admits that it acquired a license to the subject photograph on Plaintiff's website on Jan 14, 2020, and used the licensed material according to its understanding of the license at the time. Use of the licensed materials ceased on or before May 5, 2021. Defendants have insufficient information regarding the remainder of this allegation, and on that basis deny it. Anything not specifically admitted is denied.

13. No response is required.

COUNT 1 – COPYRIGHT INFRINGEMENT

14. No response is required.

15. Denied.

16. Denied.

17. Denied.

18. Denied.

COUNT 2 – VICARIOUS INFRINGEMENT

19. Denied.

20. Denied.

21. Denied.

22. Denied.

GENERAL DENIAL

Defendant denies any express or implied allegations of the Complaint not specifically responded to above and denies that Plaintiff is entitled to any relief sought in its Prayer, or any other relief sought.

DEFENSES

1. Defendant purchased a valid license to the allegedly copyrighted material on Jan. 14, 2020, valid for no less than one year.
2. Plaintiff provided no notice prior to or on the purported expiration date of the valid license purchased by Defendants.
3. Plaintiff knew of the alleged copyright infringement on or about February 26, 2021.
4. Plaintiff did not notify Defendants of the alleged copyright infringement until May 5, 2021.
5. Defendants discontinued use of the allegedly copyrighted image on the same day.

6. Plaintiff's claims and the right to recover therefrom are barred in whole or in part by the equitable doctrines of laches, estoppel, equitable estoppel, failure to mitigate damages, and unclean hands, including but not limited to copyright misuse.

PRAYER

Wherefor, Defendant prays that Plaintiff's claims be dismissed in their entirety with prejudice, that Plaintiff be allowed to take nothing therefrom, and that Defendant be awarded its reasonable costs and attorney fees pursuant to 17 U.S. Code § 505 and 28 U.S. Code § 1927 together with any such other relief that the Court finds just.

Respectfully submitted,

Date: 10 September 2021

\s\ Henning Schmidt

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Attorney for Defendant James Greenhaw & Simnet, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been filed electronically with the Court and will be served via email on all counsel of record on 10 September 2021.

\s\ Henning Schmidt
Henning Schmidt